

NOT DESIGNATED FOR PUBLICATION

ERROL NUMA, WILLIE * **NO. 2009-CA-0338**
LINDSEY, KATHERINE
LUCAS, KRISTINA LUCAS, *
WAYNE THOMAS, KEVIN **COURT OF APPEAL**
JOHNSON, LARRY WARNER *
AND BRIAN BATISTE **FOURTH CIRCUIT**
*
VERSUS **STATE OF LOUISIANA**

* * * * *

**CUSTOM BUS CHARTER,
INC., JOHN DOE, RELIANCE
INSURANCE COMPANY AND
PROGRESSIVE INSURANCE
COMPANY**

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-18855, DIVISION "F-10"
Honorable Yada Magee, Judge**

* * * * *

Judge David S. Gorbaty

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(Court composed of Judge Max N. Tobias, Jr., Judge David S. Gorbaty, Judge Paul A. Bonin)

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REMANDED

In this appeal, plaintiffs assert that the trial court erred in dismissing their claims on the grounds of abandonment. For the reasons set forth below, we remand.

FACTS AND PROCEDURAL HISTORY

On October 24, 1997, plaintiffs filed this lawsuit against defendants Custom Bus Charter, Inc., Reliance Insurance Company, and Progressive Insurance Company, for injuries and damages arising out of a bus accident. Attorneys Arthur O’Keefe and Stephen Bernstein, through their law firm Stephen M. Bernstein, A Professional Law Corporation, represented plaintiffs, including plaintiff Errol Numa, in connection with this case. It was agreed that they would represent Numa on a contingency fee basis, whereby they would receive a percentage of the amount of money recovered, plus all costs and out-of-pocket expenses in connection with the litigation. O’Keefe and Bernstein funded Numa’s litigation through Advocate Financial, L.L.C. (“Advocate”), the appellant here. Advocate lends money to law firms and their clients to fund the reasonable expenses of litigation.

To evidence the loan, it is alleged that Numa executed a promissory note payable to the order of Advocate in the principal amount of \$30,000.00, plus interest in the amount of 16.99% per annum from the date of the note until the date of full repayment, plus reasonable attorneys' fees, not to exceed 25% of the amount due under the note. In addition, Numa granted Advocate a "continuing security interest in any and all rights to proceeds which he may recover against any defendant as a result of a claim which arose on or about October 25, 1996, and which involved Custom Bus Charter, including specifically the above-captioned lawsuit."

By January 2000, Numa had discharged O'Keefe and Bernstein as his attorneys. They continued to represent other plaintiffs in the suit.

In response to being discharged, O'Keefe and Bernstein filed a Petition of Intervention on January 28, 2000. They asserted a privilege with regard to their rights to recover costs and attorneys' fees and attached a copy of their contingency agreement with Numa.

Thereafter, on July 26, 2000, Advocate filed a Petition for Intervention asserting claims for recovery of Numa's indebtedness under the promissory note and recognition of their security interest in any and all rights to proceeds that Numa might recover in this case.

During the course of litigation, one of the defendants, Reliance, became insolvent, and Louisiana Guaranty Insurance Agency ("LIGA") took over in its place. LIGA was never officially named as a defendant in the plaintiffs' main case. Nevertheless, on October 1, 2004, O'Keefe and Bernstein filed a Supplemental and Amended Petition for Intervention adding LIGA as a defendant to their claims-in-intervention. Because Advocate was not a party to the

intervention, however, it was not served with the pleading. LIGA answered the petition on April 12, 2005, and once again Advocate was not served.

On January 31, 2007, Advocate filed into the record a letter addressed to the Clerk of Court noting its understanding that the case had been stayed pending resolution of the issue over Reliance's insolvency, and inquiring as to whether Reliance was still the defendant, or another insurance company had been substituted in its place.

Subsequently, on November 20, 2008, Custom Bus Charter and Reliance filed an Ex Parte Motion to Dismiss on Grounds of Abandonment with Incorporated Memorandum, stating that "no steps have been taken in the prosecution or defense of this matter since April 12, 2005, and accordingly, this lawsuit should be dismissed *nunc pro tunc* as of April 12, 2008." Defendants requested that the motion be served only on Arthur O'Keefe. The trial court granted the motion. Plaintiffs have not appealed the dismissal, and their right to do so has expired; only Advocate has filed an appeal here.

DISCUSSION

In granting the Motion to Dismiss, the trial court dismissed "any and all claims of plaintiffs asserted in the above captioned matter against defendants." In their opposition brief, defendants state that the trial court's ruling "only dismisses plaintiff's claims" and "does not adversely affect Advocate Financial's claims." In its brief, Advocate agrees that the trial court's ruling does not purport to cover Advocate's claim-in-intervention. Since the order only dismissed plaintiffs' claims, Advocate has no right to appeal the judgment. As such, we remand this matter to the trial court for resolution of Advocate's claims.

CONCLUSION

Accordingly, for the foregoing reasons, this matter is remanded to the trial court.

REMANDED